

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Smartmatic USA Corp.;	)	
Smartmatic International	)	File No. 22-cv-98
Holding B.V.; and SGO	)	(JMB-JFD)
Corporation Limited,	)	
	)	St. Paul, Minnesota
Plaintiffs,	)	June 21, 2024
	)	2:00 p.m.
vs.	)	
	)	
Michael J. Lindell and My	)	
Pillow, Inc.,	)	
	)	
Defendants.	)	

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BEFORE THE HONORABLE JOHN F. DOCHERTY  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(MOTION HEARING)**

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

ERIN D. DROST, RMR-CRR  
(651) 848-1227

APPEARANCES

For the Plaintiffs: Benesch Friedlander Coplan &  
Aronoff  
JAMES RICHARD BEDELL, ESQ.  
127 Public Square  
Suite 4900  
Cleveland, Ohio 44114

Robins Kaplan LLP  
WILLIAM E. MANSKE, ESQ.  
800 LaSalle Avenue, Suite 2800  
Minneapolis, Minnesota  
55402-2015

For the Defendants: McSweeney, Cynkar and  
Kachouroff, PLLC  
CHRISTOPHER KACHOUROFF, ESQ.  
13649 Office Place  
Suite 101  
Woodbridge, Virginia 22192

Court Reporter: ERIN D. DROST RMR-CRR  
Suite 146  
316 North Robert Street  
St. Paul, Minnesota 55101

1                                   P R O C E E D I N G S

2                                   IN OPEN COURT

3  
4                   THE COURT: All right. We are here this afternoon  
5 for a hearing on the plaintiffs' motion for an order to show  
6 cause why the defendants should not be held in contempt  
7 alleging various discovery violations.

8                   Let's begin by getting appearances beginning with  
9 counsel for the plaintiffs, the moving party.

10                  MR. MANSKE: Good afternoon, Your Honor. William  
11 Manske for the plaintiffs.

12                  MR. BEDELL: Good afternoon. James Bedell for the  
13 plaintiffs.

14                  MR. KACHOUROFF: Good afternoon, Your Honor.  
15 Christopher Kachouroff for Mr. Lindell and My Pillow.

16                  THE COURT: I have read the papers. I have read  
17 Ms. Loftus' declaration. I have looked through the  
18 aggregate data that's appended to Mr. Kachouroff's response  
19 in opposition, and I'm ready to proceed.

20                  Mr. Manske, will it be you doing the argument?

21                  MR. MANSKE: It will be Mr. Bedell, Your Honor.

22                  THE COURT: All right. Mr. Bedell, you have the  
23 floor. And if there's anything that you think it's  
24 important for me to know that isn't in your papers.

25                  I will also let the parties know that although I'm

1 familiar with most civil proceedings, this is new on me,  
2 order to show cause for contempt, and I just want you to  
3 know that in terms of what your presentation is.

4 MR. BEDELL: Understood, Your Honor. Now,  
5 Your Honor, Smartmatic's motion to show cause relates to  
6 this Court's orders from August 1st, 2023, and October 19,  
7 2023.

8 Smartmatic has attempted to work with defendants  
9 in order to ensure their compliance with those orders, and  
10 we've also worked to narrow the issues that we feel are  
11 critical to bring in front of the Court today. But the fact  
12 of the matter is the defendants have not complied with those  
13 orders, at least not fully, and so we've brought this motion  
14 to show cause.

15 Now as far as the standard is concerned for a  
16 motion to show cause, Smartmatic has the burden to show that  
17 a valid order existed, but there's no dispute that your  
18 orders from August 1st, 2023, and October 19, 2023, were  
19 valid orders that are on the docket. There's no dispute  
20 that the defendants have knowledge of those orders. And as  
21 we've shown in our motion papers, and as I will be happy to  
22 illustrate for you today, defense have disobeyed those  
23 orders.

24 Now, that meets Smartmatic's burden on a motion to  
25 show cause. It allows you to certify the facts surrounding

1 this motion and enter an order compelling the defendants to  
2 stand in front of Judge Bryan and explain why they should  
3 not be held in contempt.

4 Now, on a motion to show cause, the defendants can  
5 then show that there's some justifiable inability for them  
6 to have complied with the orders, but based on the  
7 opposition that we received to our motion, it appears that  
8 defendants' position is that they have indeed complied with  
9 those orders.

10 THE COURT: Well, my understanding as to the first  
11 area of contention, which is the financial documents, is  
12 that Mr. Lindell represents that he has turned over his tax  
13 returns for '20 and '21. That tax returns for '22 and '23  
14 are still being prepared. That they'll be turned over  
15 immediately upon completion. Is that your understanding of  
16 their representation?

17 MR. BEDELL: That is my understanding, Your Honor.

18 THE COURT: And what's wrong with that  
19 representation?

20 MR. BEDELL: So several things, Your Honor.  
21 First, the document request, Request For Production  
22 Number 30 that you found was relevant and compelled  
23 defendants to produce documents responsive to, asked for  
24 documents sufficient to show Mr. Lindell's personal  
25 financial condition, including, but not limited to, tax

1 returns. Now tax returns are obviously responsive, but  
2 that's not what the order was limited to. And there are  
3 documents that we are aware of that do exist in defendants'  
4 possession that they have refused to produce to us.

5 THE COURT: Such as?

6 MR. BEDELL: So there's -- I would probably put  
7 them in two categories, but before I mention that, I think  
8 it's important to say that some of the vagueness objections  
9 that we've received from defendants here, that we haven't  
10 fully specified --

11 THE COURT: No, no, I asked --

12 MR. BEDELL: Sure.

13 THE COURT: -- you what other responsive  
14 documents.

15 MR. BEDELL: Sure. So, Your Honor, one category  
16 of documents would be the documents that form the basis of  
17 Mr. Lindell's tax returns. We have his tax returns for  
18 certain years. We have promises to get his tax returns for  
19 two other years. What we do not have are the documents that  
20 form the basis of those tax returns; such as, W-2s, W-4s,  
21 1099 forms, K-1 forms.

22 It's hard for us to say exactly because we don't  
23 know what we don't know. There are -- Mr. Lindell is  
24 obviously in a much better position than we are to  
25 understand what documents are sufficient to show his

1 financial condition. But that is at least one category of  
2 documents that we can identify as documents that we are  
3 quite certain exist and that we do not have.

4 But on top of that, and this also goes into our  
5 Request For Production Number 32 regarding the IRS audit --  
6 documents relating to the IRS audit, there is a substantial  
7 amount of overlap between those two categories so I'm  
8 addressing them simultaneously here.

9 But just on Monday, we received a production from  
10 the defendants in which one document from -- pertaining to  
11 the IRS was disclosed to us. I want to be a little bit  
12 vague about it because the document was marked confidential,  
13 and I would like to be respectful of that designation. But  
14 from a very high level, from a very broad perspective on  
15 that document, the IRS requested 12 categories of documents  
16 from Mr. Lindell, all of which relates to his personal  
17 financial condition, none of which have been produced to us  
18 in this case. And the IRS requested those to be delivered  
19 to them by the end of September, 2023, which was before the  
20 October 19 order in which you ordered the defendants produce  
21 those documents.

22 Again, we're not sure exactly how much more might  
23 be out there that could be responsive to your order, but  
24 those are at least two categories of documents that we know  
25 exist and that we know we do not have.

1 THE COURT: Let's talk then about the viewership  
2 metrics. It looks to me as though Mr. Lindell made a  
3 statement, maybe oversold things in terms of the quality of  
4 the data that was available, and then found himself unable  
5 to provide or make good on that. It looks like he used --  
6 or somebody acting at his direction used Google Analytics,  
7 got what there was to be gotten, and turned it over. It  
8 also looks like from their representation that there is  
9 nothing else. Is that your understanding of their  
10 representation?

11 MR. BEDELL: So one -- generally, yes, Your Honor.  
12 One part is that those Google Analytics documents --  
13 apologize if I misheard you, Your Honor -- but those have  
14 not been turned over to us. And that is the main focus of  
15 what our motion is about.

16 THE COURT: Have you seen what's attached to their  
17 response?

18 MR. BEDELL: Yes, I have, Your Honor.

19 THE COURT: Okay. What are those?

20 MR. BEDELL: So those are documents from  
21 FrankSpeech.

22 THE COURT: All right.

23 MR. BEDELL: FrankSpeech is a website owned by  
24 Mr. Lindell. That website did not come into existence until  
25 roughly I want to say April of 2021. And it did not have



1 any content for a few -- at least a few weeks after that.  
2 And to clarify why that's important, Absolute Proof! -- you  
3 know, our motion papers indicate that a lot of the  
4 viewership metrics data that Mr. Lindell has publicly stated  
5 as far as how many people have viewed his documentaries,  
6 Absolute Proof! came out on February 5th, 2021, so it  
7 predates the existence of FrankSpeech by months.

8 So analytics data from FrankSpeech, we are happy  
9 to have it, but it is not the complete picture and it does  
10 not accurately reflect the statements that Mr. Lindell has  
11 made about the viewership for Absolute Proof!

12 THE COURT: Okay. So but what I'm trying to get  
13 at is what is there that's out there that you are looking  
14 for? Because it looks like some of the things that  
15 Mr. Lindell represented that he had, he might not actually  
16 have had. And that's probably embarrassing for Mr. Lindell,  
17 but it doesn't mean that there is responsive -- there are  
18 responsive documents that can be given to you.

19 MR. BEDELL: So, Your Honor, our understanding of  
20 defendants' representations that they made in their fifth  
21 supplemental response to our first set of interrogatories,  
22 specifically to the interrogatory in question, Number 15,  
23 they said the Google Analytic data was collected but that  
24 they viewed it as not responsive or -- otherwise they did  
25 not want to produce it because of their contention that it

1 measured page views and they could not necessarily say that  
2 that fully translated into a view of Absolute Proof! itself,  
3 which we believe, put into the proper context, is not a  
4 valid basis to withhold disclosing those documents that they  
5 have.

6 THE COURT: Well, that would depend upon the  
7 actual phrasing of the request, wouldn't it?

8 MR. BEDELL: Yes.

9 THE COURT: What's the number?

10 MR. BEDELL: Interrogatory Number 15, Your Honor.

11 THE COURT: So it's: Identify all metrics you use  
12 to quantify the number of individuals who viewed an accused  
13 program or defamatory broadcast and provide the  
14 corresponding data for each accused program or defamatory  
15 broadcast.

16 Why is it your contention that statistics showing  
17 how many people went to a website but can't show how many of  
18 those people then took the further step of opening up a  
19 video is responsive to your Interrogatory 15?

20 MR. BEDELL: So, Your Honor, what I would like to  
21 point out there is that when Absolute Proof! was released on  
22 February 5, 2021, defendants directed interested viewers to  
23 Michaeljlindell.com. If you went to Michaeljlindell.com on  
24 February 5th, 2021, and for weeks thereafter, that was the  
25 only thing on the page. There was no other thing to click

1 on. There was no other way to interact with the website.

2 It was just simply the video.

3 So it is our contention that it is highly relevant  
4 because there's simply no reason for someone to be on that  
5 website, and there's simply nothing else for them to do on  
6 that website other than to watch that video because it is  
7 simply the only thing there. Which is why we believe that  
8 since they have represented that they have this data -- and,  
9 furthermore, in response to the motion to compel that led to  
10 your August 1st order, they made that representation that  
11 they had data supporting those claims as a way to avoid  
12 actually being compelled to produce that documentation, and  
13 so that's why we believe that they should be -- they should  
14 be -- that's why we believe that Smartmatic is entitled to  
15 those documents.

16 Now, unless you have other questions about the  
17 metrics data --

18 THE COURT: No.

19 MR. BEDELL: -- there is obviously a third portion  
20 of our motion to show cause also related to the August 1st,  
21 2023 order. As far as supplementing defendants' disclosures  
22 to make clear whether they are withholding responsive  
23 documents based on their objections, while it is  
24 Smartmatic's preference that that order be followed to the  
25 letter, we understand from the opposition papers the

1 defendants filed that they are not holding -- they are not  
2 withholding documents that are responsive based on any  
3 objections. So in the interests of efficiency, we're  
4 willing to accept that, and we can put that aside.

5 THE COURT: All right. So that's over and done  
6 with?

7 MR. BEDELL: Yes.

8 THE COURT: All right.

9 MR. BEDELL: We're willing to take defendants'  
10 representation on that.

11 THE COURT: Okay. Thank you.

12 MR. BEDELL: Sure. And that's all, unless you  
13 have any other questions for me?

14 THE COURT: No, I don't. Thank you.

15 MR. BEDELL: Thank you.

16 THE COURT: All right. Mr. Kachouroff.

17 MR. KACHOUROFF: Good afternoon, Your Honor. I'll  
18 be brief. I only have two points to cover unless you have  
19 other questions, and I figured we'd start with Requests for  
20 Production 30 and 32.

21 THE COURT: Uh-huh.

22 MR. KACHOUROFF: There's a couple things that I  
23 heard my colleague say, that they worked with us, that we  
24 have not fully complied. The first time I heard that they  
25 want W-2s and K-1s. K-1s, by the way, are tax returns.

1 They are being worked on now this -- today. So that will be  
2 turned over immediately.

3 THE COURT: It's not so much what he said as what  
4 the request calls for. And the request --

5 MR. KACHOUROFF: Correct.

6 THE COURT: The way I read the papers, the request  
7 calls for documents that show Mr. Lindell's financial  
8 situation. They give as an example tax returns. And, in  
9 fact, I think they say including, but not limited to, tax  
10 returns.

11 MR. KACHOUROFF: Correct.

12 THE COURT: Your response is you want tax returns  
13 and you've got two tax returns and you are going to get two  
14 more, so why aren't we finished here? And I think the  
15 fairly obvious rejoinder is tax returns were just an  
16 example. We actually want documents.

17 MR. KACHOUROFF: You're correct, Your Honor. And  
18 in any civil matter -- in any civil -- in business, private  
19 business, many private businessmen do private financial  
20 statements. That would be a document that I would be  
21 looking for without even asking Mr. Lindell, which I did,  
22 and he doesn't have them. Why? Because prior to this  
23 onslaught of litigation, Mr. Lindell was self-sufficient.  
24 He didn't require loans that way.

25 So I don't know whether he's got any -- I asked

1 him if he had any personal financial statements on him. He  
2 said he doesn't believe that he has them. I've asked him to  
3 look for them. I'm confident that if they are there,  
4 they'll turn up.

5 THE COURT: Okay. But --

6 MR. KACHOUROFF: The best picture -- what's -- you  
7 know, because if you look at their request --

8 THE COURT: Just one -- before we move on.

9 MR. KACHOUROFF: Yeah.

10 THE COURT: If the taxes are being prepared, they  
11 are being prepared from some raw data. There are documents  
12 that have been given to accountants or tax lawyers or  
13 whoever is doing this. And why would those papers not be  
14 responsive to the plaintiffs' document request?

15 MR. KACHOUROFF: I don't care whether they are  
16 responsive or not, I'm going to turn them over. As soon as  
17 we have the tax returns and the audit is done, they can have  
18 it. We've got nothing to hide.

19 THE COURT: Well, wait, wait. The RFP -- well,  
20 the request, I'll just call it, because I'm not clear which  
21 category it goes into, but the request, which has now been  
22 pending for eight months, is for these papers. You're  
23 saying that, Well, when the audit is finished, you will get  
24 them.

25 MR. KACHOUROFF: Candidly, I don't know what is in

1 the possession of the accountant. I called him on the  
2 phone. I said, Look, they want all communications with the  
3 IRS concerning the -- the audit.

4 THE COURT: Right.

5 MR. KACHOUROFF: He sent to me a fax of ten pages.  
6 I turned around, Bates stamped it, shipped it off to them.

7 THE COURT: Right.

8 MR. KACHOUROFF: So they got that. What other  
9 documents there may be there that are -- I will absolutely  
10 go back and look for those, Judge. I'll personally go to  
11 the accountant's office myself, and I will secure the file.  
12 I'll go through it physically. I won't rely upon him to do  
13 that. If there's any documents there, I don't see why they  
14 can't have them.

15 THE COURT: Well, I don't either.

16 MR. KACHOUROFF: Okay. I'm trying to be --

17 THE COURT: And that sort of gets me to my next  
18 point, which is, you indicate in your papers that you  
19 suspect the plaintiffs of wanting to interfere with an  
20 audit.

21 MR. KACHOUROFF: That's correct.

22 THE COURT: I'm not clear how getting copies of  
23 papers is interfering with an audit. They are not  
24 whispering things in the IRS's ear. They are not doing  
25 anything of that sort. They've made a request in civil

1 discovery for these papers. There's been a motion, it's  
2 been ruled on, and I'm just not clear of what -- you didn't  
3 go into any detail about what this interference with an  
4 audit was.

5 MR. KACHOUROFF: Okay. So first of all, Judge,  
6 we've collapsed two categories by their admission. And I  
7 don't want to collapse them. RFP 30 stands alone. RFP 32  
8 stands alone. Request for Production Number 30 says,  
9 "documents sufficient to show the financial condition."  
10 Sufficient to whom? Having advised numerous private  
11 businesses over the years, I can tell you tax returns are  
12 sufficient to show you the financial condition of an  
13 individual. Now --

14 THE COURT: Okay. Let's take your point. I  
15 didn't see that response in your papers. I haven't heard  
16 that response to this point in this litigation. I'm hearing  
17 it for the first time that sufficient that you, in fact,  
18 will be in compliance when you've turned over the tax  
19 returns.

20 MR. KACHOUROFF: That's correct.

21 THE COURT: And that's not anything that's been --

22 MR. KACHOUROFF: Well, I apologize.

23 THE COURT: -- heard before.

24 Well, no, you don't need to apologize, but I  
25 thought that we were having a discussion about these



1 accountant work papers. You are going to go and look for  
2 them. You are going to go through the file. You're going  
3 to turn them over. And yet at the same time you are saying,  
4 if I understand you correctly, that those aren't really  
5 necessary because the tax returns themselves will be  
6 sufficient.

7 MR. KACHOUROFF: Correct. But I'm also trying to  
8 head off additional proceedings in the future, because I  
9 want to get this case trial ready. I want to finish it up  
10 and get it done.

11 THE COURT: Okay. Good.

12 MR. KACHOUROFF: You know, that's my goal. And I  
13 think there's -- and I want to address that. I know that's  
14 not necessarily before the Court, but I want to make sure I  
15 answer the Court's questions on Request For Production 30  
16 and 32 first. So I maintain that we will have complied with  
17 30.

18 In terms of 32, documents relating to any IRS  
19 audit, we've turned that over. Now if they want travel  
20 receipts, if they want the shoe box full of business  
21 receipts -- and I'm being -- I'm using a metaphor here  
22 because this isn't --

23 THE COURT: I understand.

24 MR. KACHOUROFF: -- I mean, they want that and  
25 it's in a form that I can produce it, I will. If it's

1       literally in a bunch of file boxes, you know, if they'll pay  
2       for the cost of copying, I'll have it copied and sent out.  
3       But I think it's absurd to say that they don't have a  
4       sufficient view of what his financial condition is.

5               THE COURT: Well, whether it's absurd or not, that  
6       horse has sort of left the barn. We had hearings on this --  
7       back in August we had -- or before that. There's been an  
8       order issued in August. There's been an order issued in  
9       October. And, you know, if there are continuing objections  
10      to that order, you know, they should have been either  
11      addressed in a motion for reconsideration directed to me or  
12      they should have been appealed to the District Court Judge.  
13      That didn't happen. These orders are final, and they need  
14      to be complied with.

15             MR. KACHOUROFF: I have no objections to the  
16      orders. I think we are complying with them. And maybe  
17      we're missing -- I don't know where the Court thinks we're  
18      not complying, I'll put it that way.

19             THE COURT: Where I think you're not -- where I  
20      have questions about whether you are complying is you are  
21      indicating that, yes, there are documents. Those documents  
22      would be responsive to a request. You're saying that those  
23      documents might be superfluous to a request, but that's a  
24      different thing to say than not responsive.

25             So you're saying once the tax returns are done,

1 we'll turn over the tax returns and that will satisfy one of  
2 the two RFPs, but at the same time, you are acknowledging  
3 that there are documents that are responsive. And if the  
4 contention is going to be the tax returns standing alone are  
5 sufficient to satisfy this, then I think that's something  
6 that should have been heard last fall, not now.

7 MR. KACHOUROFF: As you know, I wasn't here last  
8 fall.

9 THE COURT: I know you weren't, but you took over  
10 the case.

11 MR. KACHOUROFF: I did.

12 THE COURT: And you are standing there, and so I  
13 can't talk to Mr. Parker or Mr. Kaplan about this.

14 MR. KACHOUROFF: Right.

15 THE COURT: I have to talk to you.

16 MR. KACHOUROFF: So I would imagine there are  
17 documents responsive to 32. But as I have indicated to my  
18 counsel, as soon as -- and we expect the IRS audit to be  
19 over in the next few weeks. I said in my e-mail or my  
20 response, out of an abundance of caution, September. I  
21 don't think it's going to be September. I'm going to give  
22 the Court my best guess is they'll get it probably by the  
23 end of July at the latest.

24 THE COURT: Why do you need to wait for the audit  
25 to be over before you turn over these papers?

1 MR. KACHOUROFF: Well, for starters, you know, I  
2 did not read the request, Request 32, documents relating to  
3 any IRS audit, it said documents and communications. I  
4 wasn't thinking that they wanted the shoe box full of  
5 receipts. In fact, they haven't said now what documents  
6 they want. They just want documents they want to go search.  
7 And I don't have anything to hide. My client doesn't have  
8 anything to hide. I'm glad to send it.

9 THE COURT: Okay. Then let's get them out.  
10 But --

11 MR. KACHOUROFF: Right. But --

12 THE COURT: -- but in answer to the question I put  
13 to you, sir, why do you need for the audit to be over?

14 MR. KACHOUROFF: Well, the answer is I don't need  
15 for the audit to be over in order to take the shoe box full  
16 of receipts and go get them copied. That's the answer.

17 THE COURT: All right. Okay.

18 MR. KACHOUROFF: If that's what the Court wants me  
19 to do, I'll do it right away.

20 THE COURT: That's what I want.

21 MR. KACHOUROFF: Okay. We will do that right away  
22 then.

23 THE COURT: Okay.

24 MR. KACHOUROFF: I will get that done. I'll have  
25 that turned over to them by Monday or Tuesday if I can get

1 the accountant's files by that time. I'm going to do the  
2 best I can to get it done by that time.

3 THE COURT: All right. You'll let me know?

4 MR. KACHOUROFF: Absolutely, Judge.

5 THE COURT: We will put a tickler on the chamber's  
6 calendar, and we will wait to hear from you.

7 MR. KACHOUROFF: Would you like me to file a  
8 notice with the Court?

9 THE COURT: Yes, please.

10 MR. KACHOUROFF: I'll do that.

11 THE COURT: All right.

12 MR. KACHOUROFF: Secondly, Judge, I want to move  
13 on to -- unless the Court has any other questions.

14 THE COURT: No.

15 MR. KACHOUROFF: He said the main focus of this  
16 motion was the metrics. You know, the idea that -- I gave  
17 them a full explanation. Mr. Lindell may have oversold, as  
18 the Court has said, and then realized after the fact that,  
19 hey, wait a minute, this isn't -- these aren't unique  
20 clicks. We can't use this information. He never kept it.  
21 That's the answer they got three different times before.  
22 It's the same answer they get today.

23 In the hearing, there was never any representation  
24 that we had data. I looked. I read the hearing transcript.  
25 I didn't see that. In fact, it said if we had -- we'll look

1 again, because they are incessantly asking the same  
2 questions over and over. They want these documents, they  
3 want these documents. And so I guess they think if they  
4 keep asking that somehow they'll magically appear. Well, I  
5 did the work that my prior counsel did, I did it again, I'm  
6 annoyed about it. It's done, but guess what, they're not  
7 there. What we had is what was turned over.

8 If they want the same Google Analytics, nothing  
9 stops them from going to the Google Analytics site and doing  
10 it themselves. I'm not going to go create a brand new  
11 report and manufacture evidence after the fact just to  
12 satiate their desire to see that Google Analytics page. It  
13 doesn't exist.

14 THE COURT: Well, wait. It exists but you won't  
15 go get it.

16 MR. KACHOUROFF: No.

17 THE COURT: No, the Google Analytics exists. You  
18 can go and query Google Analytics, generate a report, and  
19 turn it over. You're not going to. And if I can complete  
20 your thought for you, that's because that report, having not  
21 been created, is not in your possession, custody, or  
22 control?

23 MR. KACHOUROFF: That's correct.

24 THE COURT: Okay. So the Google Analytics data is  
25 out there. It's equally accessible to both parties. Is

1 that your contention?

2 MR. KACHOUROFF: That's my contention. Yes,  
3 Judge.

4 THE COURT: And they can slice it, dice it, and  
5 print it up --

6 MR. KACHOUROFF: However they wish --

7 THE COURT: -- however configuration they wish.  
8 All right. Understood. All right.

9 MR. KACHOUROFF: Thank you, Judge. That's all I  
10 have for now, but I do want to address scheduling orders  
11 with the Court after this is --

12 THE COURT: Let's wrap this up first.

13 MR. KACHOUROFF: Thank you.

14 THE COURT: Any rebuttal?

15 MR. BEDELL: Yes, Your Honor.

16 Your Honor, we're here on a motion to show cause,  
17 not a motion to compel. We -- what I just heard was  
18 confirmation that defendants possess responsive documents,  
19 and they are -- and they have not given them to us. This  
20 isn't our negotiation, our meet and confers after first  
21 issuing this discovery request. This isn't an oral argument  
22 in front of you for a motion to compel. This is months  
23 later that we are finally here frustrated that we have not  
24 gotten these documents that defendants' counsel has admitted  
25 exists. But we are here on a motion to show cause.

1 THE COURT: No. I understand what we're here on.  
2 I'm not under any misapprehension. But Mr. Kachouroff has  
3 said that the documents will be with you Monday or Tuesday  
4 of next week. Today is Friday.

5 I am not -- I am vanishingly unlikely, let's put  
6 it that way, to certify this for Judge Bryan if you get what  
7 you want within two business days.

8 MR. BEDELL: And that's understandable,  
9 Your Honor.

10 THE COURT: Well, thank you.

11 MR. BEDELL: One thing I will point out that  
12 defendants' counsel did say was that tax returns on their  
13 own would be sufficient. While we also agree with your  
14 point that that should have been raised earlier, we would  
15 also argue it's not. Especially when you consider, in this  
16 particular instance, where -- you know, while obviously  
17 Smartmatic is not privy to the reasoning for the IRS audit,  
18 it hypothetically could call into question the accuracy of  
19 the documentation on the tax returns we have received. And  
20 so in that sense, the tax returns on their own would not be  
21 sufficient and the raw data that constitutes those tax  
22 returns are --

23 THE COURT: Are you saying that receipt of an  
24 audit notice from the IRS is in some way prima facie  
25 evidence of financial skullduggery?



1 MR. BEDELL: I don't know if I would go that far,  
2 Your Honor. It just -- we could not rule it out.

3 THE COURT: Well, you can never rule it out, with  
4 or without an IRS audit notice. Anybody can be crooked;  
5 right?

6 MR. BEDELL: Exactly, which is why --

7 THE COURT: Okay.

8 MR. BEDELL: And we're not necessarily insinuating  
9 that is the case here, but that is why I would disagree with  
10 defendants' counsel's representation the tax returns alone  
11 would be sufficient to understand someone's financial  
12 position.

13 THE COURT: I think defense counsel --  
14 Mr. Kachouroff's point was that in the context of American  
15 business, if you ask for documents sufficient to show  
16 someone's financial situation, several years of tax returns  
17 are by, I guess, custom of the trade, if you will, viewed as  
18 sufficient, and that is what you are going to get. You did  
19 not send out a request for all documents. You sent out a  
20 request for documents sufficient to show.

21 As you know, I have been very, very careful, going  
22 back to the voting machine controversy that we had some  
23 months ago, very careful and very precise in how discovery  
24 requests in this case are read. And documents sufficient to  
25 show, as far as I'm concerned, means documents sufficient to

1 show, not all documents.

2 MR. BEDELL: And, Your Honor, what I would say  
3 with that is then at least to -- you know, while we still  
4 stand -- while we still stand on the representation that it  
5 wouldn't be sufficient, as to 2022 and 2023, there are  
6 documents currently in possession of defendants that are  
7 responsive that they have not given us. And I understand  
8 that his representation is he will provide them.

9 THE COURT: The representation is you are going to  
10 have them very soon.

11 MR. BEDELL: Yes.

12 THE COURT: Okay.

13 MR. BEDELL: And so unless you have other  
14 questions, Your Honor --

15 THE COURT: No, I don't have any other questions.  
16 I have an observation which is that, you know, it's  
17 unfortunate that a motion had to be filed in order for us to  
18 get here, but let's see where we are next week. But as I  
19 say, I am not going to put a hearing of this seriousness on  
20 Judge Bryan's calendar if you are going to get what you have  
21 asked for tout de suite. If you don't get it, that's going  
22 to be a different story. But I'm confident that I will be  
23 getting a notice from Mr. Kachouroff next week, and if it  
24 turns out that it's not as advertised or if the notice  
25 doesn't come in, I know what to do.

1 MR. BEDELL: Okay.

2 THE COURT: All right?

3 MR. BEDELL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 All right. Mr. Kachouroff, you wanted to be heard  
6 on scheduling?

7 MR. KACHOUROFF: Yes, Your Honor.

8 THE COURT: Now I did not bring out with me the  
9 scheduling order in this case, so --

10 MR. KACHOUROFF: Yeah, I don't think you need to.

11 THE COURT: Okay.

12 MR. KACHOUROFF: And respectfully, the scheduling  
13 order as it has morphed is somewhat incoherent internally.

14 THE COURT: I'm sure it is.

15 MR. KACHOUROFF: And I would like the Court to  
16 kind of start afresh with a schedule. We don't have to make  
17 it a long schedule, but there's a couple things, like fact  
18 discovery ends July 9th, expert rebuttal reports are due  
19 July 9th.

20 THE COURT: That seems ambitious.

21 MR. KACHOUROFF: It does in my view.

22 THE COURT: Okay.

23 MR. KACHOUROFF: What I'd like to do is set out --  
24 I do want to get this case trial ready and I want to talk  
25 about a real-world, practical solution. A long time ago

1 when I was a law clerk, my judge had me draft what I call  
2 the order from hell for the parties. And I can't believe  
3 I'm bringing it up to you now because I'm suggesting the  
4 Court should do that with us.

5 I think in the scheduling order we should set up  
6 one day to hear all discovery disputes, because this morning  
7 I got another e-mail covering some of the same topics from  
8 my colleagues asking for additional -- they are setting up  
9 another round of disputes in order to come before the Court.  
10 And all that does is it violates the Federal Rule of Civil  
11 Procedure Rule 1. And that rule says that we are to  
12 administer the rules so that they are speedy, just, and  
13 inexpensive. And this is not just the Court's duty. It's  
14 the parties' duty.

15 And I think one way to achieve that inexpensive  
16 result, without having to come to court all the time and  
17 waste judicial resources, is to set up that order and that  
18 order looks like this. The dispute is described and the  
19 parties have to work together to fill out each column. And  
20 there's two columns on the other side of it which say, you  
21 know, this is the dispute, this is our position, this is  
22 their position. And then there's a third column that's  
23 blank, and that's for the Court to use as a worksheet during  
24 the hearing.

25 I'm trying to make it as painless as possible for

1 the Court, yet at the same time have all the discovery  
2 disputes resolved at one time. They are going back to last  
3 July, last September to address things that I'm not -- I  
4 have to go back to the other firm now to figure out, well,  
5 you were in a position of homeostasis, nothing was going on  
6 with these discovery battles, why are they coming up now?  
7 Why are they waiting 8 months to do this?

8 And I think part of it is the scheduling order. I  
9 think the other part is we're just not thinking of this in a  
10 real-world, practical way of setting up dissolution in one  
11 date. Set it up in the future. This is your date, guys.  
12 This is when you can bring your motions to compel or what  
13 have you. But as the Court order stands now, it doesn't  
14 allow for that.

15 I have got some more disclosures that I'll be  
16 doing, fact disclosures, about Smartmatic, and there's going  
17 to be additional witnesses. And I have already offered to  
18 my colleagues they have almost met their 25-deposition  
19 limit. My response to them is, I have no problem going  
20 beyond that if you think you need that. We can do that.  
21 You can go ahead and depose these folks, because it is kind  
22 of a late notice on the disclosure. We are getting near the  
23 end of the discovery period. So I'm trying to be  
24 reasonable. I want to get this case trial ready, so that's  
25 my argument to the Court.

1 THE COURT: All right. Thank you. Any response?

2 MR. BEDELL: Yes, Your Honor. So, Your Honor,  
3 first, while I appreciate defense counsel's interest in  
4 efficiency, that is not before the Court today, which is  
5 kind of indicative of how this has been going since the fact  
6 discovery period was reopened here. Smartmatic has been  
7 diligent in raising issues to Your Honor when we find, you  
8 know, timely and to the best of our abilities. We don't  
9 believe the schedule needs to be changed. We think that we  
10 can meet all of our deadlines and we can get everything that  
11 we need to do and get this case trial ready.

12 THE COURT: How are you going to do expert  
13 rebuttal on the 9th of July when fact discovery doesn't  
14 close until the 9th of July?

15 MR. BEDELL: Our understanding is we will be  
16 prepared. We think --

17 THE COURT: No, no, no. How are you going to do  
18 it? I mean, you don't have opening experts yet, how can you  
19 have rebuttal experts?

20 MR. BEDELL: My understanding is we do have  
21 opening experts.

22 THE COURT: Okay. All right.

23 MR. BEDELL: Yes, we've exchanged opening.

24 THE COURT: Okay. All right.

25 MR. BEDELL: I'm sorry, Your Honor. I apologize.

1 Part of it is --

2 THE COURT: I expected that to follow fact  
3 discovery, but okay.

4 MR. BEDELL: Right. Yeah, this case -- the  
5 original schedule was a little bit overlapping as far as  
6 fact and expert discovery --

7 THE COURT: All right.

8 MR. BEDELL: -- has been concerned. And I  
9 apologize if I'm misspeaking on certain issues. Obviously I  
10 was prepared to come today to argue a motion to show cause  
11 and not necessarily discuss the scheduling order.

12 THE COURT: Right.

13 MR. BEDELL: A couple things I did want to  
14 highlight is first just that our position at the moment is  
15 that we can meet the schedule as is. We don't believe that  
16 any modification to the discovery schedule is necessary.

17 And one point of clarification is the e-mail that  
18 my colleague sent to Mr. Kachouroff this morning as far as  
19 other disputes that Smartmatic may need to bring in front of  
20 you, that was a proposal to use your IDR process because of  
21 the reasons that Mr. Kachouroff rightly acknowledged of  
22 efficiency and making sure that at this late stage in the  
23 process, that we're doing so not necessarily -- we're not  
24 trying to overlitigate this case. There are issues that  
25 we'd like to bring in front of you, but we have indicated to

1 him that we'd be willing to use the more informal IDR  
2 process to facilitate that in a more expedited manner.

3 THE COURT: All right. All right. Thank you all  
4 very much. Mr. Kachouroff, I'll wait for that notice.

5 MR. KACHOUROFF: Yes, sir. Yes, Judge.

6 THE COURT: And I think that that is it for this  
7 afternoon.

8 MR. KACHOUROFF: Thank you, Your Honor.

9 THE COURT: Thank you all very much. Court is  
10 adjourned.

11 (Court adjourned at 2:33 p.m.)

12 \* \* \*

13  
14  
15 I, Erin D. Drost, certify that the foregoing is a  
16 correct transcript from the record of proceedings in the  
17 above-entitled matter to the best of my ability.

18  
19 Certified by: s/ Erin D. Drost

20 Erin D. Drost, RMR-CRR  
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